



## **Section 7: Continuing Innovation – Addressing Local Needs in a Changing Environment**



### **THE CHANGING ROLE OF THE COURTS**

The ordinary administration of criminal and civil justice contributes, more than any other circumstance, to impressing upon the minds of the people affection, esteem, and reverence towards the government.

—Alexander Hamilton

We must never forget that the only real source of power that we as judges can tap is the respect of the people.

—Justice Thurgood Marshall

The preceding chapters have focused on specific techniques for creating and enhancing community collaboration programs in today's court environment. But that court environment, as well as the world at large, is always changing. It is important that the courts consciously address their changing role and focus more directly on public trust and confidence. To appreciate the changing role of the courts, it is helpful to compare and contrast what have been described as the traditional and new eras in judicial administration.<sup>1</sup>

<b>Traditional Era</b>	<b>New Era</b>
<ul style="list-style-type: none"><li>➤ Adjudication as principal means of dispute resolution</li><li>➤ Courts as monopoly providers of justice services</li><li>➤ Focus on prejudgment process</li><li>➤ Generalist</li></ul>	<ul style="list-style-type: none"><li>➤ Alternative dispute resolution processes: mediation, problem solving</li><li>➤ Competitive governmental, administrative, and private providers of dispute resolution and enforcement services, for example, child support, traffic, contract arbitration, rent-a-judge</li><li>➤ Greater focus on postadjudication processes, monitoring, enforcing, coaching, healing (therapeutic justice)</li><li>➤ Specialized but comprehensive courts</li></ul>

<sup>1</sup> Roger K. Warren. "Courts and Community: Creating the Vision." National Center for State Courts, National Association of State Judicial Educators (NASJE) Annual Conference, Oct. 6, 1997.



Traditional Era	New Era
<ul style="list-style-type: none"> <li>➤ Limited group of stakeholders (litigants and lawyers)</li> <li>➤ Formal, technical forms and processes</li> <li>➤ Process measurement: inputs (filings), outputs (dispositions), clearance rates, efficiency, backlogs, delay reduction</li> <li>➤ Judicial independence: being left alone (isolation), self-management, avoiding entanglements</li> <li>➤ Focus on dispute resolution as the fundamental purpose of courts</li> <li>➤ Little public scrutiny of court proceedings or records</li> </ul>	<ul style="list-style-type: none"> <li>➤ Broader definition of stakeholders, including witnesses, jurors, victims, pro per litigants, non-English-speaking participants, other justice agencies, the community, and the public</li> <li>➤ Informal, nontechnical forms and processes: user friendly, customer service</li> <li>➤ Outcome measurement: quality, effectiveness (e.g., recidivism), Trial Court Performance Standards, customer service, public trust and confidence</li> <li>➤ Judicial independence: through interdependence, systems thinking, “integrated justice,” electronic information exchange, reaching out, court community collaboration, public trust and confidence, and accountability</li> <li>➤ Broader focus, including educational, moral, and therapeutic purposes; upholding the rule of law; defining acceptable behavior; reinforcing basic values; regenerating a sense of community; and protecting, guiding, and supporting children, the mentally ill, and other vulnerable groups whose welfare so often depends on court services</li> <li>➤ Dramatic escalation of public interest in and access to court proceedings and records, electronic access, intensive media coverage, greater international interest in American justice system</li> </ul>

The changing role of the courts revealed in this comparison requires judges and court administrators to develop new skills to assist courts as problem solvers and collaborators with the communities they serve. The information offered in the remainder of this section is a “creativity and innovation primer” intended to introduce court leaders to the types of creativity-enhancing skills and tools available for use internally in court management and in community collaboration efforts. It represents a brief introduction to organizational development, which court leaders are urged to explore more fully as they embrace the “new era of judicial administration.”



## CREATING AN ENVIRONMENT FOR CONTINUING INNOVATION

The greatest issue for court leaders is how to prepare ourselves—and our courts—for the future.

—Justice Sandra Day O'Connor<sup>2</sup>

The courts will change only when the people within them change.

—Charles Claxton, former Director  
Leadership Institute in Judicial Education<sup>3</sup>

Today's solutions may solve the problems they were designed to address but are not necessarily the best approach for dealing with new situations. In one way or another we as individuals, and the courts as an institution, must address new situations every day. In response to the ever-changing nature of the courts' environment, it is important that the courts create the opportunity for ongoing innovation.

*Innovate* means to "bring in new methods, ideas, etc.; to make changes."

*Innovation* is "originality, inventiveness, creativity, imagination, imaginativeness, novelty; invention; modernization; alteration; change."<sup>4</sup>

In the private sector an innovation merely needs to be profitable to be worth doing; in the public sector innovation must be about doing something worthwhile. Innovation must challenge the prevailing wisdom and advance the public good. A high percentage of government and nonprofit innovation occurs against the odds—i.e., it is brought forth in organizations that are hostile to change.<sup>5</sup>

Innovative organizations have four broad characteristics:

1. A commitment to controlling their environments (rather than the other way around);
2. An internal structure that creates the freedom to imagine;
3. Leadership that prepares the organization to innovate; and
4. Management systems that serve the mission of the organization, not vice versa.

To address each of these four organizational attributes requires commitment and willingness to persevere over the long term in organizations as large and as slow to change as government often is. The appropriateness of creating an environment that encourages innovation ultimately depends on whether innovation helps or hinders an organization's mission. Innovation is a means to an end, not the end in itself.

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<sup>2</sup> Hon. Sandra Day O'Connor, Remarks. Second National Conference on Court Management, September 9, 1990.

<sup>3</sup> Roger K. Warren, "Courts and Community: Creating the Vision"

<sup>4</sup> *The Oxford Dictionary and Thesaurus*. New York: Oxford University Press, 1996.

<sup>5</sup> Paul C. Light, *Sustaining Innovation: Creating Nonprofit and Government Organizations That Innovate Naturally*, San Francisco: Jossey-Bass Publishers, 1998.



## **Innovation Resources Available**

The types and degree of organizational adjustment to sustain innovation is explored in detail in *Sustaining Innovation: Creating Nonprofit and Government Organizations That Innovate Naturally*. Six key tools that support innovation in organizational management are strategic planning; reengineering; Total Quality Management (TQM); benchmarking, performance measurement, and management; team management; and privatization. These tools are described in detail including their costs and benefits and how to integrate them into a single framework of management innovation in *Tools for Innovators: Creative Strategies for Managing Public Sector Organizations*.<sup>6</sup>

## **PREPARING FOR INNOVATION: THE FREEDOM TO IMAGINE**

Creativity and invention are not necessarily the same thing. One may use existing ideas and techniques in new ways to solve new problems. That is creativity. One may also create entirely new approaches to solve problems. That is invention. As the courts' environment continues to change, both creativity and invention are needed.

Encouraging the development of creativity—individually, in groups, and in large organizations—provides ways to deal rationally and creatively with unprecedented situations. A great deal has been written about creative thinking. Some basic concepts and suggestions that support and encourage creativity are offered here to help leaders create an innovative and collaborative working environment. Unless otherwise noted, the information presented here is adapted from *The Care and Feeding of Ideas*.<sup>7</sup> Other sources for additional reading and information are also provided to support the ongoing pursuit of creative thinking.

## **Creativity and Change**

We are all creative, and we all change. Creativity and change are often linked because creativity is needed to respond successfully to change, and creativity, in turn, results in change. As individuals, groups, or large organizations, we are perpetually balancing strong motivations for and strong inhibitors of creativity and change. By managing creativity, we can tip the balance in either direction at any time.

We might be tempted to slow change and decrease creativity to obtain stability and control. However, intentional attempts to decrease creativity, though they may possibly help reach desired short-term goals, have been found to result in long-term problems. On the other hand, increasing creativity takes work. It requires the use of techniques and principles that permit new thoughts to form. And, to create a real environment of innovation, *implementing new ideas is as important as generating them*.

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<sup>6</sup> Steven Cohen and William Eimicke, *Tools for Innovators: Creative Strategies for Managing Public Sector Organizations*, San Francisco: Jossey-Bass Publishers, 1998.

<sup>7</sup> James L. Adams, *The Care and Feeding of Ideas*, Addison-Wesley Publishing Company, Inc. 1986.



Creative thinking can occur as either conscious or unconscious thinking.

### **Conscious Problem Solving:**

- Utilizes the type of information that is typical of one's life experience
- Deals with information from both senses and memory
- Is restricted in speed to a rate approximately that of life
- Is linear and single-channel in any one sensory mode, that is, it is occupied by one topic at a time
- Likes complete information
- Is heavily influenced by behavioral factors
- Permits us to decide to do something and then attempt to do it

Unconscious thinking, also described as “following a hunch,” “letting it incubate,” “having an insight,” or “following our intuition,” is of equal if not greater importance in creative thought. Unconscious thinking has been defined as the brain's ability to accomplish higher order processing without conscious awareness. These unconscious processes apparently work faster than conscious ones, are better able to handle uncertainty, and are able to operate in nonlinear, multichannel modes. Because we are not generally aware of unconscious processes or “programming” of our minds, we may become habitual in our problem solving. Conscious management of creativity allows us to choose and embark upon new directions despite our habits.

### **Creativity and Thinking<sup>8</sup>**

A creative person is one who can process in new ways the information directly at hand. A creative individual intuitively sees possibilities for transforming ordinary data into a new creation, transcendent over the mere raw materials. Each individual has the dual ability to gather and process and to transform information creatively.

#### **Left-Brained, “Verbal” Thinking:**

Analyzes, abstracts, counts, marks time, plans step-by-step procedures, verbalizes, makes rational statements based on logic. Its mode is the analytic, verbal, figuring out, sequential, symbolic, linear, objective

#### **Right-Brained, “Feeling” Thinking:**

Intuitive, subjective, relational, holistic, time-free mode, understands metaphors, dreams, creates new combinations of ideas, “sees things in mind's eye,” sees spatial relationships and how the parts go together to make up the whole, and makes leaps of insight without figuring things out in a logical order

<sup>8</sup> Adapted from Betty Edwards, *Drawing on the Right Side of the Brain*, Los Angeles: J.P. Tarcher, Inc., 1979.



Traditional forms of education emphasize left-brain thinking. Therefore, most people, especially those with higher education, are trained to emphasize left-brain thinking patterns. To increase creativity, most people need to actively encourage right-brain thinking.

### ***Creativity Principles to Keep in Mind***

1. When solving problems remain aware that the information you have in mind is not complete and not identical to that of those around you.
2. Be aware that your brain would like to follow a traditional pattern — to simplify your life, apply solutions that have worked successfully before. Be grateful for that, but suspicious that the creativity you are looking for may not occur automatically. In seeking to increase creativity, one should be suspicious of habit. An awareness of the nature of habit and its management, however, can be a powerful tool.
3. The brain is efficient in business-as-usual situations. It is able to make use of past experience and apply it quickly and unconsciously. However, it may be less efficient in new situations.
4. Conscious effort — hard work — is both available and necessary to pursue new directions.
5. Information needed for problem solving is restricted by our senses, processed somewhat automatically by the brain, and arranged in a traditional and structured way in memory.
6. Memory attempts to make life easier by arranging information according to usual associations. Material recalled from memory in an automatic mode is not likely to be arranged in creative combinations.
7. Memory contains more information than one is aware of.
8. New combinations can be consciously made, either by manipulating raw information recalled from memory or by using specific techniques for creating new combinations.

In addition to principles of creativity, it is helpful to be aware of different problem-solving techniques that can be used in different situations. When we purposefully use different problem-solving approaches, the brain is not habituated to one style of thinking and creativity is encouraged. The problem-solving models described here are: Analysis-Synthesis, Divergence-Convergence, and Deduction-Induction. Not mentioned here are other specialized methods people use to solve problems; these are based on personality types, learning styles, and the way people function individually, in groups and in large organizations. Knowledge of these other models is also important for anyone seeking to support and enhance creativity. (See *The Care and Feeding of Ideas* and the other resources cited in this section.)



## ***Methods Used to Engage in Problem Solving***

### **Analysis-Synthesis Model**

*Analysis* refers to the separation of the whole into its parts to discover the characteristics of these parts and their relationship to each other and to the whole. Analysis is widely used in science, literature, and all other fields. It is a high-level human intellectual activity. *Synthesis* refers to the putting together of parts into a whole to come up with a construct to satisfy the goal. The overall purpose of human analysis is to allow better synthesis. In analysis, where unknowns and uncertainties exist, synthesis is necessary to adapt analytical techniques to the problem or to synthesize new analytical techniques.

### **Divergence-Convergence Model**

*Convergent thinking* focuses on an answer. In convergent thinking, techniques are used that eliminate uncertainty, simplify complexity, and enhance decision making. *Divergent thinking* is the process of generating ideas, concepts, and approaches. It is an extremely powerful process that is probably less familiar to most people because less emphasis is put on it in our schools and public consciousness. In divergent thinking, more concepts are generated, which makes decision making more complex. But having more alternatives to consider results in a greater probability of a more creative solution. Each part of this model depends on the other. It is inefficient both to continue to generate ideas without at some point “converging” them to a decision or choice, and to converge without spending some effort to at least examine some alternatives, if not generate new ones. Individuals, groups, and organizations often identify with only one side of the model: the divergent (blue sky, creative, idea person) or the convergent (tough-minded, decisive, practical person).

### **Deduction-Induction Model**

*Deduction* is reasoning from the general to the specific. It is used to go from a theory to a specific set of facts or from an equation to an answer. Deduction is the primary thought process used in judicial decision making: deducing from the law to the facts to get the result. *Induction* is reasoning from the specific to the general. It is how scientific theories are created and how we often solve problems. Competent problem solving requires both induction and deduction.

## **CREATIVITY TECHNIQUES**

Many different techniques can be used to spur creativity. Described here are checklists, attribute analysis, games and metaphors, and education.

### **Checklists**

Checklists require conscious control of thinking to consider alternatives that the unconscious might otherwise ignore. Two checklist examples are presented here.



### Problem-Solving Checklist

<i>Understanding the Problem</i>	What is the unknown, the data, the condition?
<i>Devising a Plan</i>	Did you use all the data? Did you use the whole condition? Have you taken into account all essential notions involved in the problem?
<i>Carrying Out the Plan</i>	Check each step to ensure correctness and prove its correctness.
<i>Examining the Solution Obtained</i>	Check the result. Can you derive the result differently? Can you see it at a glance? Can you use the result of the method for some other problem?

### Checklist to Generate New Ideas

<i>Put to Other Uses</i>	New ways to use as is? Other uses if modified?
<i>Adapt</i>	What else is this like? What other idea does this suggest? Does the past offer a parallel? What could I copy? Whom could I emulate?
<i>Modify</i>	New twist? Change meaning, color, motion, sound, odor, form, shape? Other changes?
<i>Magnify</i>	What to add? More time? Greater frequency? Stronger? Higher? Longer? Thicker? Extra value? Plus ingredient? Duplicate? Multiply? Exaggerate?
<i>Minimize</i>	What to subtract? Smaller? Condensed? Miniature? Lower? Shorter? Lighter? Omit? Streamline? Split up? Understate?
<i>Substitute</i>	Who else instead? What else instead? Other ingredient? Other material? Other process? Other power? Other place? Other approach? Other tone of voice?
<i>Rearrange</i>	Interchange components? Other pattern? Other layout? Other sequence? Transpose cause and effect? Change pace? Change schedule?
<i>Reverse</i>	Transpose positive and negative? How about opposite? Turn it backward? Turn it upside down? Reverse roles? Change shoes? Turn tables? Turn other cheek?
<i>Combine</i>	How about a blend, an alloy, an assortment, an ensemble? Combine units? Combine purposes? Combine appeals? Combine ideas?





## Attribute Analysis

Attribute analysis is based on the proposition that if we consider the attributes of people, things, or situations—rather than operating from our stereotypes—we can come to different, more creative conclusions. By moving from stereotypes to specific characteristics, we jog our minds into behavior that is different from our usual problem solving.

## Games and Metaphors

Another way to spur creativity is to design games or gimmicks to divert the usual happenings in the mind. For example, a simple tactic is to open a book, put your finger randomly on a word, and then use that word to find a solution for a question. Another method is to use four types of metaphors to encourage original concepts—that is, use information stored in memory in new combinations to realize new concepts. These four types of metaphors are as follows:

<i>Personal analogy</i>	Problem solver personally identifies with all or part of the problem and its solution.
<i>Direct analogy</i>	Problem solver directly applies parallel facts, knowledge, technology, or other information.
<i>Symbolic analogy</i>	Problem solver applies impersonal objects or images to the problem and possible solution.
<i>Fantasy analogy</i>	Problem solver uses fantasy to solve the problem.

## Education

Another way to encourage the creation of new combinations of information is through education. The purpose of education in this context is to (1) learn new information, techniques, and attitudes, and (2) question our assumed mental limits. Education is necessary to creativity and in change situations to provide new and pertinent knowledge, techniques, and attitudes either for direct application or to improve communication and decision making. An investment of time in education outside one's traditional specialty or set of problem-solving habits pays great long-term dividends.

## COURAGE AND CONFIDENCE TO PURSUE NEW DIRECTIONS

Emotions inevitably accompany creativity and change. Creativity and change are risky. When heading into the unknown, anything may happen — including failure. It takes courage and confidence to pursue new directions. It is important to take risk and potential negative emotions into account and to be aware of ways to handle them intelligently. Some of the ways to do that are to:



- Understand and confront risk directly so that we are conscious of generalized anxiety;
- Protect ourselves and others from risk by ensuring that failures will not result in unacceptable damage;
- Reward ourselves and others for living with risk; and
- Use humor to lighten the sense of risk and to allow for accompanying insights and solutions.

## **GROUP DYNAMICS AND DECISION MAKING**

As the courts seek to involve judges, court staff, and community members in finding new ways to address the justice needs of the community, courts need to learn effective ways to lead groups in their communication and creative activities. This is a challenge to the traditional way in which the courts have operated and requires that justice system leaders develop a set of skills that they may not otherwise have developed. Organizational development and group facilitation are areas in which court leaders should seek training and experience. Many resources are available to support learning these new skills. A few of them are as follows:

- Peter M. Senge, *The Fifth Discipline — The Art and Practice of the Learning Organization*. New York: Doubleday, 1990.
- Sam Kaner, *A Facilitator's Guide to Group Decision-making*. San Francisco: Community At Work, 1997.
- *The Technology of Participation: Focusing Collective Power for Change: Group Facilitation Methods*. Phoenix: Institute of Cultural Affairs, 1994.

## **CREATIVE RESPONSES TO COMMUNITY PROBLEM SOLVING AND PUBLIC EDUCATION: TWO EXAMPLES**

The concepts presented in this section are offered to introduce the challenges and benefits of creating a culture of creative thinking in the justice system. There are many other aspects of creating such a culture, all of which cannot be addressed here. What can be offered, however, are examples of creative thinking that have positively influenced the operation of and public education about the justice system.

The following two examples of new community collaboration programs demonstrate the kinds of creative action, combined with individual inspiration, that can develop in response to community needs. These kinds of continuing innovations will be needed as the courts more actively and effectively reach out to the communities they serve.



## **Example: Continuing Jurisdiction in Landlord-Tenant Cases**

***Court and community cooperation.*** A citizens' initiative began in December 1996 to investigate the extent and causes of, and remedies for, substandard housing conditions in Los Angeles. This initiative, later known as the Los Angeles Blue Ribbon Committee on Slum Housing, was led by representatives from the fields of law, business, and academia.

In response to recommendations made by the blue ribbon committee, representatives of the Los Angeles Municipal Court met with committee members to discuss ideas for addressing the problem of substandard housing conditions in the city.

***Traditional court role in substandard housing cases.*** Previously, substandard housing conditions that violated health and safety, fire, and other state and municipal ordinances were handled through criminal charges. Once the underlying case between the landlord and tenant had been resolved, the court hearing the dispute would not continue jurisdiction. The problem of poor living conditions would not be addressed again until charges were brought against the landlord in criminal court. In the meantime, the conditions in the building would worsen and become more costly to repair.

California Code of Civil Procedure section 1174.2 authorized continuance of jurisdiction in these cases based on habitability grounds, but in the past the court seldom used this authority. Because of heavy calendars it was not feasible for the court to continue hearings until the habitability problems had been resolved.

***Court innovation.*** As a result of cooperation with the blue ribbon committee, the court recently established a procedure by which it may retain jurisdiction of landlord-tenant cases where there has been a finding of a legitimate habitability issue. This procedure is currently in place in the Los Angeles Municipal Court's Central Civil Division, and one courtroom has been designated to monitor enforcement of ordered repairs. By continuing jurisdiction after a decision has been rendered in a landlord-tenant case, the court can now ensure compliance with orders to repair and correct the conditions that constitute a breach of the landlord's obligations.

Changes and cooperation among many elements of the community were needed to create this new program. First, the court made the change in procedure possible by modifying its existing civil calendar. Specifically, hearings to determine the progress of repairs are all set in one courtroom and heard by one judge on Tuesday and Thursday afternoons. Additionally, the participation of attorneys for the tenants and landlords has been essential to the scheduling of progress reports. Often, legal aid organizations representing tenants must devote extra time to follow these cases through to completion. Without these efforts, the court would not be able to confirm claims concerning repairs by the landlords.



### **Example: Teaching High School Students About Basic Family Law and Responsible Decision Making**

A letter from David L. Hallikainen, attorney, Richmond, California, October 23, 1997, responding to a notice about the work of the Special Task Force on Court/Community Outreach published in the *California Family Law First Alert Newsletter*:

The idea of teaching high school students about family law is the result of a joke made by my law school community property professor. He indicated that we would not need to teach kids sex education if we taught them about community property laws. Although he intended the statement to be a joke, I thought there might be some value to the idea.

Sometime later, I was sailing with [a] friend who was a high school teacher and the subject was discussed. He thought it was a good idea and he introduced me to . . . the health instructor at St. Mary's High School in Berkeley. [She] thought it was a good idea and . . . asked me to speak to her students.

Last year was the first year we included the family law discussion in the health classes. The primary focus of the discussions is the importance of making responsible decisions. I discuss the California family law system, community property, child support, paternity, and child support enforcement. Students are generally surprised at the legal consequences of parenting a child.

After the first few classes were concluded, I convinced a local family law commissioner to donate a video tape of actual proceedings in her courtroom. The tape shows the students the reality of the family law courtroom. They are surprised by the expediency of decision making and the magnitude of the orders.

At this point in time, I do not have any written materials, however, I am planning on developing some this year. Thus far, I have been experimenting with different approaches. I do not consider myself a skillful speaker or teacher and I am certain that my current approach could be greatly improved.

Since beginning these lectures, I have had inquiries from other attorneys and organizations regarding the idea. My thought is that the current burden on family law courts could be somewhat relieved if local family law attorneys would donate a few hours a year in their own communities talking to high school students. Such an approach educates the kids in a classroom as opposed to a courtroom down the road. Furthermore, it does not cost the taxpayer a dime. Besides all the practical reasons, it is fun for all concerned.

I have included herewith a sampling of letters that I received from the students.



## Sampling of Student Letters

I found your speech very interesting. I got a lot out of it. When you came in I knew nothing about domestic cases or how serious they could be. When you left you broadened my horizons on the subject. Thank you very much for coming in.

—Joey

Thank you for coming and talking about child support, it was a pleasure. I learned that you must get to really know the person you love before you have kids. Also you should consult a counselor too. You must not ignore the consequences of having kids.

—Michaela

Thank you for coming to our class and showing us a little bit about the legal system in [the family law] area. I think it was very important for us students to realize and understand the consequences of complicating our lives like that. It was very educational.

—Tom

Thank you for coming to our class and talking to us. I learned that having a baby costs a lot of money. Even if you die [you] still have to pay child support. I also learned that marriage if it goes bad . . . can really be bad. Another thing I learned is that breaking up a marriage can destroy both spouses.

—Terry

Thanks for talking to our class . . . and informing us on how early decisions in your life can affect you forever. Also thanks for reminding us we need to think our decisions over before we make them final.

—Stacia

Thank you for coming to my class to teach us about what happens after divorce. At least now, I would make sure that I will pick the right woman for me, and make sure it is the right [time] to have kids because I would not want part of my income and everything to be given away. So thanks very much for coming to my class to give us very useful advice.

—Edward

It was a pleasure having you come and speak with our class about real life situations of the courtroom. It taught me to deal with situations as the ones we discussed as soon as possible before they get worse. It was an educational experience to look forward to in the future of our law system and the way it works. Hope you come back with more.

—Kellee

